

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
September 17, 2007

**D051071      Lorenzo H. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. The request for stay is denied. Nares, Acting P.J.; We Concur: Haller, J., Aaron, J.

**D051547      In re Uebbing on Habeas Corpus**

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Huffman and Haller. The petition is denied. This court's order of September 5, 2007, staying execution of sentence will expire on September 27, 2007.

**D051469      Tara G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Tara G. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D048272      In re Kayla C. et al., Juveniles**

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D051197      In re Broome on Habeas Corpus**

The petition is denied.

**D051624      Kolender v. Superior Court of San Diego County/Barcello**

The petition for writ of mandamus and request for stay have been read and considered by Justices Huffman, Haller and O'Rourke. The petition is denied. It is clear from a review of the transcript the trial court is asking for and intends to review only citizen complaints against the remaining officer, to the extent any exist, not the entire personnel file. We therefore see no violation under *People v. Mooc* (2001) 26 Cal.4th 1216. The official reporter's transcript of proceedings filed September 14, 2007, does not appear to be sealed. Because the trial court ordered the proceedings sealed, the Clerk of the Court is ordered to seal the official reporter's transcript of proceedings with the unofficial transcript sealed and filed September 13, 2007. (See Cal. Rules of Court, rule 8.160(c)(1).)

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September 18, 2007

**D049713      People v. Sewell**

The portion of the judgment awarding credits is reversed. In all other respects, the judgment is affirmed. The matter is remanded to the trial court with directions to order the preparation and filing of a supplemental probation report and to hold a new hearing on the issue of credits. After that hearing, the trial court shall prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D049653      Booth Business Park v. Southern California Foam & Coatings, Inc.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D050097      People v. Fekadu**

The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

**D048598      People v. Codinha, Jr.**

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Benke, J.

**D051439      Stacey B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Stacey B. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D051429      Ken B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Ken B. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D051485      Stu Segall Productions, Inc. v. Superior Court of San Diego County/Klingler**

The petition is denied.

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September 19, 2007

**D050187      Taff et al. v. Therastaff Inc., et al.**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

**D051140      In re Russell on Habeas Corpus**

The petition is denied.

**D048865      Loucks et al. v. Jacobs**

The judgment is affirmed. Erick Jacobs is to recover his costs on appeal. McConnell, P.J.;  
We Concur: O'Rourke, J., Aaron, J.

**D051631      Realmuto v. The Superior Court of San Diego County/Argoud**

The petition is denied.

**D050416      People v. Jackson**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
September 20, 2007

**D051203      In re Armstead on Habeas Corpus**

The petition for a writ of habeas corpus has been read and considered by Justices Huffman, Haller and O'Rourke. We take judicial notice of San Diego Superior Court file SCD143593. Daryl B. Armstead entered a negotiated guilty plea to nine counts of robbery and admitted nine gun use allegations on February 26, 2003. The court sentenced him to the stipulated term of 15 years in prison on March 25, 2003. Armstead contends his sentence is illegal under *Apprendi v. New Jersey* (2000) 530 U.S. 466, *Blakely v. Washington* (2004) 542 U.S. 296 and *Cunningham v. California* (2007) 549 U.S. \_\_\_, [127 S.Ct. 856] because the court imposed a low term on count 1. In *Cunningham*, the United States Supreme Court decided California's Determinate Sentencing Law (DSL) violates a defendant's right to a jury trial and proof beyond a reasonable doubt by allowing a judge to conduct fact-finding on aggravating factors used to justify the upper term sentence. *Cunningham* does not apply to Armstead because he waived a jury trial and was not sentenced to an upper term. Armstead also contends he was denied effective assistance of counsel because he was not advised of the possible maximum sentence when he pleaded guilty. The change of plea form Armstead executed stated, "I understand that I may receive this maximum punishment as a result of my plea: 46.8 years (46 yrs 8 mos) in State Prison." (Italics added.) Armstead has not established counsel was ineffective and he received the benefit of his bargain. The petition is denied.

**D050386      People v. Newman**

Affirmed. Irion, J; We Concur: McDonald, Acting P.J., McIntyre, J.

**D051616      In re O'Shell on Habeas Corpus**

The petition is denied.

**D051199      In re Welch on Habeas Corpus**

The petition is denied.

**D051585      In re Allen on Habeas Corpus**

The petition is denied without prejudice to filing in Second Appellate District.

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September 21, 2007

**D047342      People v. Dixon**

The judgment is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., McIntyre, J.

**D050057      In re Bennie Dixon on Habeas Corpus**

The petition is denied.

**D049020      People v. Stuedemann**

The judgment is reversed. McDonald, Acting P.J.; McIntyre, J., Irion, J.

**D051025      Rita M. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**

The petition is denied. Huffman, Acting P.J.; We Concur: McIntyre, J., Irion, J.

**D049396      Whaley v. State of California Employment Development Department**

The judgment is affirmed. EDD is entitled to costs on appeal. McDonald, J.;  
We Concur: Haller, Acting P.J., Irion, J.

**D050237      People v. Finamore**

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Aaron, J.

**D046794      Estate of Richardson**

The orders are affirmed. Respondents are entitled to costs on appeal. McDonald, J.;  
We Concur: Haller, Acting P.J., Irion, J.

**D050806      Houlihan v. Bowman**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to  
issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D050034      People v Shields**

The order is affirmed. CERTIFIED FOR PUBLICATION. Haller, J.; We Concur: Huffman,  
Acting P.J., Nares, J.

**D051194      In re Ho on Habeas Corpus**

The petition is denied.